

1 Antonio Medina
2 PO Box 361361
3 Milpitas, California 95035
(714) 418-1183
Plaintiff

FILED

NOV 27 2020

SUSAN Y. GOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

4
5 UNITED STATES DISTRICT COURT
6 NORTHERN DISTRICT OF CALIFORNIA
7 SAN FRANCISCO DIVISION

8 ANTONIO MEDINA,

Case No. 3:14-cv-00143-RS

9 Plaintiff,

DEclaration of DR. ANTONIO
10 MEDINA IN REPLY

v.

11 MICROSOFT CORPORATION, et al.,

Judge: Hon. Richard Seeborg
Hearing: December 17, 2020
Time: 1:30 p.m.

12 Defendants.

13
14 I, ANTONIO MEDINA, declare as follows:

15 1. I am the Plaintiff in the above-referenced matter. I know the facts declared herein to be
16 true of my own personal knowledge and belief except for those facts which are stated on
17 information and belief, and as to those facts, I believe them to be true. If called as a
18 witness, I would competently testify thereto.

19 2. I make this declaration in reply to the opposition to my motion strike and seal.

20 3. I contacted Microsoft's attorney Judith Jennison by email and telephone on several
21 occasions regarding this motion. She once indicated that: "Microsoft is amenable to the
22 Court rendering a decision *ex parte*."

23 4. On November 1, 2020, I sent her an email with the motion and declaration and indicated
24 to her that it was going to be filed imminently. This email is contained in Exhibit A to the
25 Declaration of Judith B. Jennison in Opposition to Plaintiff's Motion to Strike and Seal.

26 5. On November 3, 2020 when the motion papers had already been sent by mail for filing I
27 received an email from Judith Jennison indicating that Microsoft did not consent to ex

parte hearing of the motion. This email is contained in Exhibit A to the Declaration Of Judith B. Jennison In Opposition To Plaintiff's Motion To Strike And Seal.

6. I replied to the email of November 3, 2020, the next day. Attached as **Exhibit A** is a true and correct copy of the email I sent to Ms. Jennison on November 4, 2020, regarding the filing of this motion. In essence, I replied to her that the papers had already been mailed for filing and there was no possibility to make any further changes.

7. I did not admit or deny which cases, listed in Microsoft’s motion for a Protective Order, belonged to me and which did not, because they were irrelevant, and because Microsoft had not explained the purpose of those cases. I explicitly declared then and now that some of the cases listed by Microsoft were not mine. I had no obligation to sort out in detail which were mine and which were not when there was no need or reason. Microsoft also offered the cases for the truth of facts narrated therein, as it still does in its present opposition, but those facts are objected hearsay. It is apparent in the Protective Order that the magistrate agreed that they were irrelevant as they were not relied upon in her decision. My position has not changed. Although I demonstrate that there are no “two convictions” as claimed, there is no implied admission of anything, like me being a party in both cases.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 25, 2020, in San Jose, California.

By:

Antonio Medina
pro se

→ 11/23/2020

Mail - AN TONIO - Outlook

Service of amended motion

AN TONIO <medina_nasa@hotmail.com>

Wed 11/4/2020 10:26 PM

To: jjennison@perkinscoie.com <jjennison@perkinscoie.com>

 2 attachments (552 KB)

Declaration of Dr. Medina F.pdf; Motion to Strike F.pdf;

Dear Ms. Jennison,

The motion already went out.

I am serving you what was sent out for filing: PLAINTIFF'S NOTICE OF MOTION AND MOTION TO STRIKE AND SEAL; DECLARATION AND PROPOSED ORDER

I did a final check of the motion and the emails and notes I have on this matter.

The order was attached at the end, but with the wrong format so I fixed that. The notice of motion was provided to you too, it is the first paragraph labeled like such. Also, I made sure that everything is correct. We discussed a motion to seal/ strike some time ago, and I quoted your last email where you said that Microsoft is amenable to the Court rendering a decision *ex parte*.

If Microsoft has changed its mind you can file whatever you like.

I believe that this matter does not deserve the time and money involved in a regular motion or hearing. Furthermore, it seems to me that Microsoft and you would be interested in the motion being granted. That is why I approached you to file a stipulation. If there is anything that we can agree to I am ready to resolve this matter in the most economical way.

Antonio Medina

EXHIBIT A

RECEIVED

1 Antonio Medina
2 PO Box 361361
3 Milpitas, CA 95036
4 Tel: (714) 248-5689
In pro per

NOV 27 2020

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

5 UNITED STATES DISTRICT COURT
6
7 NORTHERN DISTRICT OF CALIFORNIA

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ANTONIO MEDINA,) Case No. 3:14-cv-00143-RS
Plaintiff,)
vs.)
MICROSOFT CORPORATION, et al.)
Defendants.)
PLAINTIFF'S REPLY TO OPPOSITION TO
MOTION TO STRIKE AND SEAL
Judge: Hon. Richard Seeborg
Hearing: December 17, 2020
Time: 1:30 p.m.

ARGUMENT IN REPLY

1. ISSUES LEFT AFTER OPPOSITION

Microsoft does not oppose Plaintiff's request to seal the requested portions of Microsoft's Motion for Protective Order or the Court's Order granting that motion.

Microsoft claims that the seal will "most efficiently dispose of this issue" Microsoft does, however, object to striking all or any portion of the pleadings. Microsoft does not claim any prejudice if this court orders the matter struck.

The seal alone will not dispose of the issue. The problem is that sealing the identified material does not remove it from computer servers and computers where it is already stored. Only if the material is stricken the republishers will have a reason to depublish it as it is no longer part of the record that they purport to reproduce and republish.

1 **2. DISPUTED FACTS**

2 Based on the reading of the Opposition papers it is apparent that there are some disputed
 3 facts. The procedural ones, listed first below, are of little import, except to evaluate the accuracy of
 4 Ms. Jenninson as a reporter of facts, but is important to evidence her lack of accuracy in her
 5 accounts, including the defamatory facts that she narrated in 2014 in her motion for the Protective
 6 Order and still narrates today.

7 Ms. Jenninson claims in her opposition that Dr. Medina has misrepresented his attempt to
 8 meet and confer with Microsoft. In her declaration of November 20, 2020. The misrepresentation,
 9 according to Ms. Jenninson is the omission of her most recent email, exchanged on November 3
 10 regarding this motion. She does not explain the significance, if any, of that email other than
 11 characterize its omission as a misrepresentation. However, Ms. Jenninson conveniently omitted in
 12 her opposition and declaration the last email of November 4, 2020, attached as Exhibit A to the
 13 declaration of Dr. Medina in reply, filed concurrently. In that email, Dr. Medina tells her in
 14 response to her November 3 email that “The motion already went out.” Therefore Ms. Jenninson’s
 15 belated email could not have been included.

16 In her opposition, Ms. Jenninson keeps talking about a “prior conviction” while admitting
 17 that there was a reversal of such, and therefore no conviction as a matter of law. She contradicts
 18 herself. She claims that Dr. Medina’s assertion that her recitation of his “criminal history” is false,
 19 defamatory, and irrelevant “is not accurate as his “prior convictions were well established and a
 20 matter of public record at the time of Microsoft’s Motion for Protective Order.” Conviction in legal
 21 parlance denotes the final judgment of the court. See Black’s legal dictionary. Therefore cannot be
 22 a conviction now after reversal and judgment of acquittal. Nor there was one at the time of the
 23 filing of the motion for Protective Order when it was known and undisputed that there was no
 24 finality because of the direct appeal filed.

25 As for the second “prior conviction” Microsoft has never shown that the defendant, in that
 26 case, is Dr. Medina, and it has not shown either what was the final disposition. An online inspection
 27 of the docket sheet shows that although this case was affirmed on appeal as Microsoft contends,
 28 there were multiple proceedings afterward attacking the judgment, including a petition for a writ of
 certiorari. The last entry refers to a writ of coram nobis. Microsoft contends that “Plaintiff did not

1 dispute the convictions in his response to Microsoft's Motion for Protective Order." That is
 2 incorrect. As explained in the Declaration of Dr. Medina in reply, he did not admit or deny which
 3 cases cited by Microsoft in its motion for protective order belonged to him and which did not,
 4 because they were irrelevant. Dr. Medina explicitly declared then and now that some of the cases
 5 listed by Microsoft were not his. Dr. Medina did not have any obligation to go over those cases and
 6 admit or deny involvement when there was no purpose since they were totally irrelevant to this
 7 action. Microsoft also offered the cases for the truth of facts narrated therein, as it still does in its
 8 present opposition, but those facts are objected hearsay. It is apparent in the Protective Order that
 9 the magistrate judge agreed that they were irrelevant as they were not relied upon in her decision.

10 **3. LAW AND ARGUMENT**

11 Defendant argues again that the allegations of criminal conduct were relevant to the issue of
 12 whether Dr. Medina could be trusted. Assuming for the argument that trustability is related to
 13 criminal conduct, trust was not the issue. The argument that Microsoft emphasizes in its opposition
 14 is that the reason why the protective order was granted, keeping Dr. Medina from seeing any and all
 15 documents to be produced, was that he "could not be trusted". Nothing even close to this reason
 16 appears in the protective order findings and conclusions. Nevertheless, Microsoft insists on its
 17 argument that trust was an issue considered by the magistrate judge for the simple reason that she
 18 repeated Microsoft's allegations of convictions, which according to Microsoft necessarily implied
 distrust.

19 The issue was not whether Dr. Medina could be trusted, but whether the documents should
 20 be kept secret by defendant Microsoft. Of course, when there is a protective order the parties are
 21 ordered to obey it. Microsoft argued that Dr. Medina might not obey it ("not be trusted") was
 22 beyond the motion for the protective order. When an order is not obeyed there are remedies,
 23 including contempt. Protective orders are issued when there is a privacy interest to protect, not
 24 when there is fear that the order might be disobeyed. A party seeking imposition of a protective
 25 order must show what is the information designated confidential and the subject matter covered by
 26 the protective order. That is what Microsoft had to show, not how trustable Dr. Medina was. Trust
 27 was not even a possible issue.

28 In determining whether to grant or deny a protective order, district courts must balance the

1 parties' and the public's respective interests. See *Brown Bag Software v. Symantec Corp.*, 960 F.2d
 2 1465, 1470 (9th Cir. 1992); *Valley Broadcasting Co. v. United States Dist. Ct.*, 798 F.2d 1289,
 3 1294 (9th Cir. 1986); see also *Federal Open Mkt. Comm. of Fed. Reserve Sys. v. Merrill*, 443 U.S.
 4 340, 363-364, 61 L. Ed. 2d 587, 99 S. Ct. 2800 (1979) (determination of whether confidential
 5 commercial information is discoverable must await the development of a proper record). The
 6 absence of facts regarding what documents are disputed, or whether the disputed documents contain
 7 trade secrets or are relevant to the prosecution of claims and any potential defenses precludes
 8 proper balancing. Issues like trustability are irrelevant.

9 Magistrate Corey granted the motion for Protective Order because Dr. Medina did not have
 10 an attorney and Microfost claimed that all its documents were strictly confidential for attorney's
 11 eyes only. She makes no mention of trustability in her Protective Order because it was not an issue.
 12 Microsoft's argument that the Magistrate must have considered it because it was the reason
 13 Microsoft used to justify an argument is simply pure speculation that also assumes that the
 14 justification was good, something that Magistrate Corey never even mentioned.

15 We can only speculate why magistrate judge Corley copied the allegations of conviction
 16 made by Microsoft in its motion for the protective order, maybe she copied the introduction of facts
 17 from Microsoft's motion to her order for convenience and concentrated on the issues of law.
 18 Section B of the magistrate's order (in p. 2) is labeled "Dr. Medina's Criminal History." A reading
 19 of that section evidences that it is a summarized copy of section B (in p. 5) of Microsoft motion,
 20 labeled "Medina's Criminal History ..." We can safely conclude that the Magistrate's section was
 21 copied from Microsoft's motion because it says that "Dr. Medina was convicted of fraudulently
 22 altering a check" citing a court opinion, but the court opinion does not say such thing. It was
 23 Microsoft who made up such defamatory fact, also miss citing the same opinion. It is easy to
 24 confirm that the opinion does not contain such allegation, which was not charged. In its opposition
 25 to the motion to strike Microsoft no longer claims that any check was altered. Whatever reason the
 26 magistrate had to copy section B from Microsoft's section B, the issue here is that she made a
 27 mistake, a mistake arising from oversight and trust in Microsoft's attorney as a supply of facts. Rule
 28 60 of the *Federal Rules of Civil Procedure* states that "The court may correct a clerical mistake or a
 mistake arising from oversight or omission whenever one is found in a judgment, order, or other

1 part of the record. The court may do so on motion or on its own, with or without notice.” The court
 2 is therefore empowered not only to seal the documents, but to strike the offending paragraphs
 3 which are undisputedly inaccurate as a matter of law, and apart from Dr. Medina’s declaration so
 4 stating.

5 Even if criminal conduct were relevant to trust, even if trustability was an issue in the
 6 motion for Protective Order, even if Magistrate Corey did not mention the issue, but was
 7 nevertheless considered by her, even if the proposition has any validity in law, the fact remains that
 8 it is not the issue now for this motion to strike as all those alleged issues have no play anymore after
 9 this case has been adjudicated. So the issue now is whether the allegations of criminal conduct have
 10 any relevance at this stage and whether those allegations that were mistakes, errors, inaccuracies,
 11 and never supported with any evidence should be in the record for any legitimate purpose. Now that
 12 the allegations are undisputably false there is no conceivable purpose or interest to perpetuate them.
 13 Microsoft has also admitted implicitly that at least one of the two convictions that it claimed was
 14 never a conviction, so Dr. Medina could never have had “two convictions.” Microsoft says now that
 15 there was a finding of guilt, and that it knew that case was under direct appeal. It is well known that
 16 there is no conviction until a final disposition, which in that case was a finding of acquittal. So there
 17 was never a conviction. The statement was false then as it is false now. Dr. Medina does not have 2
 18 convictions and never had.

19 Dr. Medina explained why sealing the documents, as Microsoft proposes, is not enough to
 20 curtail the dissemination and republication of the original documents. At least one republisher of
 21 the Protective Order contends that an order sealing it does not compel him to do the same and he
 22 can freely republish in his website the original order that he received from Microsoft’s attorneys.

23 **4. CONCLUSION**

24 For the foregoing reasons, Defendants respectfully ask this Court for an Order striking the
 25 documents or text content identified in this motion and Order that publishers and republishers of the
 26 original content remove said content from their computer servers with public access.

27 DATED: November 25, 2020



28 Antonio Medina Plaintiff

PROOF OF SERVICE

On this date a true copy of

**PLAINTIFF'S REPLY TO OPPOSITION TO MOTION TO STRIKE AND SEAL and
DECLARATION OF DR. ANTONIO MEDINA IN REPLY**

was served by email per agreement of the parties to the following addressee:

jjennison@perkinscoie.com

Judith Jennison
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 25, 2020

By: Antonio Medina